

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**

**SALEM TO MANCHESTER**  
**13933G**

April 8, 2009

**ADDENDUM NO. 4**

Bidders are advised to make the following revisions to the Plans and Proposal:

1. **Amend**, in Volume I of the Proposal, on page 15, in the Prosecution of Work, within the *Utilities* section, in the *Aerial, Exit 3 SB off-ramp* subsection, the **third sentence** in the **first paragraph** to read:

“Earthwork shall consist of blasting and excavating (paid under items in the contract) a strip 100’ minimum each side of a line between Sta. **7340+20, Lt. 40’ to 7340+20, Rt. 75’** to be completed by **July 31, 2009** in coordination with the **13933-K** Contractor for Public Service of New Hampshire to complete their relocation.”

2. **Insert**, in Volume 1 of the Proposal, on page on page 28, in the Prosecution of Work, within the *Rock Removal* section, after the *Bidder Notice* (Addendum #3, entry #6), the following:

“The Attorney General has determined that this project is generally not subject to local land use controls and that the state specifications for blasting operations specifically preempt the locally adopted ordinance. Therefore, a local permit for blasting activities related to this State road construction project is not required. See Exhibit A, attached. Compliance with the notification requirement of Saf-C 1607.04(c) is expected and should be documented by the contractor. Reasonable concerns regarding public safety raised by the local Police and Fire Departments during the notification process should be considered and addressed as appropriate.”

3. **Amend**, in Volume I of the Proposal, on page 29, in the Prosecution of Work, within the *Traffic Signing* section, the first sentence in the fourth paragraph, to read:

“The emergency reference mile marker signs and bridge mounted street name signs shall be installed **prior to October 2, 2009**”


4. **Amend**, in Volume I of the Proposal, on page 34, in the Prosecution of Work, within the *Intermediate Completion Date* section, the intermediate completion date for **occupancy of the corridor field office to October 30, 2009**.

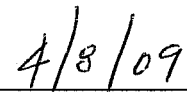


5. **Amend**, in Volume I of the Proposal, on page 34, in the Prosecution of Work, within the ***Intermediate Completion Date*** section, the intermediate completion date of the **emergency reference mile marker signs and bridge mounted street name signs to October 2, 2009.**
6. **Amend**, in Volume I of the Proposal, on page 34, in the Prosecution of Work, within the ***Intermediate Completion Date*** section, the intermediate completion date for **emergency access road to October 30, 2009.**
7. **Replace**, in Volume 1 of the Proposal, page 122A (Addendum #1) with attached pages 122H, 122I, and 122J, a revised **American Recovery and Reinvestment Act of 2009** Special Attention.
8. **Replace**, in Volume 1 of the Proposal, page 147 with attached 147A, a revised **Disadvantaged Business Directory** Special Attention.
9. **Amend**, in Volume 1 of the Proposal, on page 309, the **Special Provision for Section 645**, subsection 3.2.1.2 as follows:

**3.2.1.2** The Preparer may monitor the SWPPP or designate a representative to monitor the SWPPP. If the Preparer chooses to utilize a representative, the qualifications for this SWPPP Monitor shall include a minimum of 2 years experience or knowledge of highway and bridge construction and be certified as a Certified Erosion Sediment and Storm Water Inspector (CESSWI) with knowledge of methods of construction, demonstrated field knowledge of erosion control measures; their design, effectiveness, and maintenance requirements.

**THE CONTRACTOR SHALL ACKNOWLEDGE THIS**  
**ADDENDUM ON THE BID ENVELOPE**

  
\_\_\_\_\_  
for William J. Cass, P. E.  
Director of Project Development

  
\_\_\_\_\_  
Date

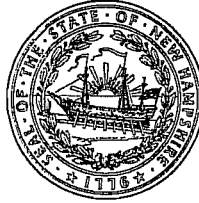


ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

Exhibit A

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE  
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II  
DEPUTY ATTORNEY GENERAL

August 22, 2008

Mr. Peter E. Stamnas *PS*  
Bureau of Highway Design  
Department of Transportation  
7 Hazen Drive  
Concord, New Hampshire 03301

Re: 1-93 Construction Projects in the Windham Blasting Ordinance

Dear Pete:

You have inquired of this office as to whether a local ordinance adopted by the Town of Windham covering blasting activities applies to the Department of Transportation's proposed project at Exit 3 as part of the 1-93 improvements. The Town of Windham adopted this unusually restrictive ordinance after a series of disputes between residents and a local developer arose. After reviewing the matter, this office concludes that the Department of Transportation's project is not subject to the restrictions imposed by the local ordinance. It is axiomatic that as the sovereign the State is not subject to local land use regulation absent specific legislative directive to the contrary. No such exception applies in this instance,

To the contrary, the General Court has articulated a clear statutory scheme that gives the Commissioner of the New Hampshire Department of Transportation plenary authority over state highways, including construction methods and standards, such that local regulation is inconsistent with that mandate. Under RSA 228:21, I (a) and (b), the Commissioner is to "exercise general supervision, control and direction, *on behalf of the state*, over all matters pertaining to the ... alteration, construction, reconstruction [and] maintenance ..." of state highways. The statute further specifies that the Commissioner's authority extends to the manner and type of construction that occurs on the highways. See RSA 228:21, I (b). Permitting the Town of Windham to exercise control over the manner and types of construction activities including blasting conducted within the state highway is clearly inconsistent with this directive.



Mr. Peter E. Stamnas

August 22, 2008

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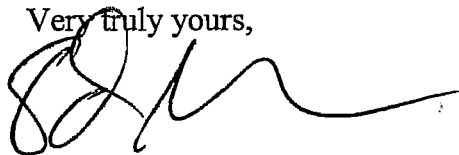
Our conclusion is supported by the terms of RSA 674:54, which clearly evinces the general legislative understanding that the State is exempt from local ordinances. The statute sets forth limited instances where the State must provide information and participate in a local public hearing process for a proposed use of state property. It specifically notes, however, that any comments by the local planning authorities with regard to "normally applicable land use regulations" are nonbinding. RSA 674:54, II. More importantly for your inquiry, the layout and construction of public highways are specifically exempted from this nonbinding hearing process. RSA 674:54, III (a). Accordingly, the Legislature clearly intended for the construction of state highways under the jurisdiction of the Commissioner of the New Hampshire Department of Transportation to be exempt from local authority.

Explosive handling and blasting activities are also extensively regulated by the Department of Safety through a series of administrative rules. It is our understanding that the Department's specifications for this project, as with all its projects, are consistent with and require compliance with those rules. Indeed, DOT is requiring additional monitoring measures beyond those typically specified as a specific result of local sensitivities. Nonetheless, some contractors have expressed concern that the Department of Safety's rules will require them to comply with the local ordinance. This concern is misplaced.

Contractors will have to comply with Saf-C 1607.04(c) by providing proper notification to the local police and fire chiefs of their activities. The rule itself does not require the issuance of a local permit, though that has been the common practice in the industry for non-state projects. Still, the rule does not constitute a waiver of sovereign immunity. Such a waiver cannot be achieved through rulemaking absent explicit legislative language. In addition, a waiver of sovereign immunity would have to be far more clear and unequivocal than contained in Saf-C 1607.04(c).

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



for

Mark P. Hodgdon  
Senior Assistant Attorney General  
Transportation & Construction Bureau  
(603) 271-3675

MPH/sed

cc: William J. Cass, Director of Project Development

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## SPECIAL ATTENTION

### **The American Recovery and Reinvestment Act of 2009**

The Contractor is advised that this project is Federally funded as part of the Economic Recovery Plan. The contractor is encouraged to provide all contract documents as soon as possible for expedited Governor and Executive Council award.

#### Funding

The Department reserves the right not to award this Contract based on the availability of funding in the American Recovery and Reinvestment Act (ARRA). In the event that the Department does not award or terminates the Contract per 108.11, the Contractor shall not make any claim against the Department for Additional Costs described in 108.B.1 or for anticipated profits. Additionally, the scope of this contract may also be expanded or reduced based on the total amount of funding available in the ARRA. The scope of this contract could also be adjusted based on quantity balances during the execution of the contract. Addition or elimination of sections will be determined by the Engineer and shall not be considered as a change in the scope of work per 104.

#### Job Reporting

As part of the Economic Stimulus Bill, (H.R. 1), the Act, periodic reporting is required. The Contractor shall report the number of direct, on-project jobs created or sustained by the Federal funds and shall report to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created. The *Monthly Employment Report* is attached to this Special Attention.

#### Required Contract Provision to Implement ARRA Section 902:

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

“(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

1224



Notification of the Authority of the Inspector General

Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

122I



**MONTHLY EMPLOYMENT REPORT  
AMERICAN RECOVERY AND REINVESTMENT ACT**

1. Report Month: (mm/yyyy)		2. Contracting Agency	
3. Federal-Aid Project Number		4. State Project Number or ID Number	5. Project Location: State, County or Federal Region
6. CONTRACTOR NAME AND ADDRESS			
Name:			
Address:			
City:		State:	
Zip:			
7. Contractor/Subcontractor DUNS Number:			

**8. Employment Data**

	EMPLOYEES	HOURS	PAYROLL
<b>Prime Contractor Direct, On-Project Jobs (see guidance for definitions)</b>			
<b>Subcontractor Direct, On-Project Jobs</b>			
Subcontractor Name			
<b>Prime and Subcontractor Totals</b>	0	0	0.00

9. PREPARED BY CEO or Payroll Official:		DATE:
Name:		
Title:		

122J



04/01/09

SSD: 06/28/04

ALL FA PROJECTS

**SPECIAL ATTENTION****DISADVANTAGED BUSINESS ENTERPRISE (DBE) DIRECTORY**

The current New Hampshire Unified Disadvantaged Business Enterprise (DBE) Directory is available on the NHDOT website at <http://www.nh.gov/dot/business/contractors.htm>. If you have questions or do not have access to the Internet, the directory may be obtained from DBE Coordinator, located at 7 Hazen Drive, Concord, NH 03302, Tel: (603) 271-6612.

147A